

Persons who sell signs that have commercial value (i. e., value to persons other than the purchasers thereof) incur Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. See 86 Ill. Adm. Code 130.2155. (This is a GIL).

October 31, 2000

Dear Xxxxx:

This letter is in response to your email of July 27, 2000 and your letter dated July 28, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY (the Parent company) has a subsidiary company located in CITY, Illinois. This company is in the business of building signs (billboards) which are built in CITY and/or installing the signs. This would also include installing the pole. For the most part, our own employees install these signs. Please note: All invoices are mailed to the office in CITY Illinois for payment. Sales tax is usually charged for the materials used to build the sign.

Keeping in mind on the above information, the following are my questions:

**Clients that are outside of COMPANY:**

- If a client is in Illinois, should sales tax be charged to the client for building the sign (built in CITY) and installing?
- If a client is outside of Illinois, should IL sales tax be charged for building the sign and installing?

**Clients that are other COMPANY subsidiaries:**

- What if the client is actually another **subsidiary** of COMPANY? Should sales tax be charged if the client is in Illinois? What if the client is outside Illinois?

In **both** situations, if the outside vendors do not charge sales tax, and the material to build the billboard is shipped/and or used outside of Illinois, should the office in Illinois accrue the tax or the end user? If the vendor who is in Illinois and doesn't charge tax

and the merchandise to build the billboard is being used in CITYX who accrues the tax, the office in CITY or CITYX?

Also, if we order merchandise and delivery and storage is in the CITY office, does the CITY office pay the sales/accrue tax and remit to the State of Illinois? If the merchandise is removed from inventory and a billboard is built and shipped to STATE, do we request a refund from the State of Illinois since the STATE office will accrue the tax? In our situation, should we request a resale certificate to simplify matters?

I appreciate your assistance in resolving the above issues. If you have any questions or would like to discuss the above situations in more detail, please contact me #####.

Initially, we must note that we do not have enough information regarding the transactions with your subsidiaries to determine if sales by the Parent have occurred that are subject to Illinois Retailers' Occupation Tax or Service Occupation Tax. If the subsidiaries are separately registered for Illinois tax purposes, the Parent would incur Illinois tax liabilities based upon the following general information.

Please be advised that a person who sells signs that have commercial value (i. e., value to persons other than the purchasers thereof) incurs Retailers' Occupation Tax (sales tax) liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out "real estate", "insurance", "hamburgers" etc. and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. Please refer to 86 Ill. Adm. Code 130.2155 Vendors of Signs, enclosed. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450, enclosed.

Because your transactions may involve the imposition of local taxes in Illinois on sales made to Illinois customers, the following information on the collection of local taxes is provided for your consideration. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. Please see the enclosed copy of 86 Ill. Adm. Code 270.115 concerning jurisdictional questions of the Home Rule Municipal Retailers' Occupation Tax. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes because if the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred.

For purposes of determining the location where the "selling" occurs, the regulation governing the Home Rule Municipal Retailers' Occupation Tax (86 Ill. Adm. Code 270.115) states in Subsection (b)(3): "the place where the property is located at the time of the sale (or subsequent production in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale." This means if the purchase order for a sale of

tangible personal property is accepted out-of-State and the property to be transferred in the sale is located or subsequently produced in a Home Rule Municipality/County/Mass Transit (e.g. RTA) District jurisdiction, then that particular jurisdiction where the property is located (or subsequently produced) is considered the seller's place of business for that particular sale. So for sales where the tangible personal property to be transferred is located (or subsequently produced) in a local tax jurisdiction, local tax would be due even if the seller accepts the purchase order out-of-State. For Illinois retail sales the seller is required to collect the local taxes from the customer in addition to Illinois Use Tax.

Although the enclosed regulation (Section 270.115) concerns the Home Rule Municipal Retailers' Occupation Tax, the same principles outlined in this regulation apply to other local taxes administered by the Department (e.g., the Regional Transportation Authority Retailers' Occupation Tax or the DuPage County Water Commission Retailers' Occupation Tax).

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would be commercially valueless to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act and the sign vendor would be considered a serviceman.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident of their sales of service. Servicemen incur either Service Occupation Tax (SOT) liability or Use Tax liability in these transactions. The tax consequences depend upon the method used to calculate the liability. Servicemen may calculate their tax base in one of four ways: 1. separately stated selling price; 2. 50% of serviceman's entire bill; 3. SOT on his cost price if he is a registered de minimis serviceman; or, 4. Use Tax on his cost price if he is an unregistered de minimis serviceman. Please see the enclosed copy of 86 Ill. Adm. Code 140.101, the Basis and Rate of the Service Occupation Tax.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal

property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. Such servicemen collect a corresponding amount of Service Use Tax from their customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers.

If your company purchases materials for the purpose of resale, such materials can be purchased tax-free upon presenting the vendor with a certificate of resale according to 86 Ill. Adm. Code 130.1405, enclosed. Regarding sales which are shipped out of Illinois to out-of-State purchasers, please refer to 86 Ill. Adm. Code 130.605, enclosed, concerning Sales of Property Originating in Illinois. Subpart (c) of this regulation states that Retailers' Occupation Tax does not apply where sellers ship goods by carrier or by mail, according to the terms of agreements with purchasers, and the seller delivers the goods from a point within Illinois to a point outside Illinois and the goods are not to be returned to Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Illinois and local Retailers' Occupation Tax, although there may be a tax liability in the other state involved in the transaction. However, sales are not deemed to be in interstate commerce if the purchaser or his representative receives the physical possession of the property in Illinois, even if such property is immediately transported outside of Illinois, 86 Ill. Adm. Code 130.305(a)(1) and (2). There is a similar exemption from the Service Occupation Tax, as described at 86 Ill. Adm. Code 140.501, enclosed.

The above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into permanent real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate would be required to self-assess and remit the Use Tax to this Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075, enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz  
Associate Counsel

KWB:msk  
Enc.